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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,354	07/12/2006	Manfred Ratzsch	4385060043	5568

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EXAMINER	
FRANK, NOAH S	

ART UNIT	PAPER NUMBER
1796	

MAIL DATE	DELIVERY MODE
12/08/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/565,354	RATZSCH ET AL.	
	Examiner	Art Unit	
	NOAH FRANK	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 September 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *30-56* is/are pending in the application.

4a) Of the above claim(s) *37-55* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *30-36 and 56* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 56 provides for the use of a plastics product, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 56 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 30-36 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ratzsch et al. (EP 1247837).

Considering Claim 30: Ratzsch et al. teaches a modified aminoplastic for the production of semi-finished and molded products, comprising 5-50 wt.% thermoplastic polymer and 50-95 wt.% melamine resin (Abs). The preferred amounts of thermoplastic and melamine are 10 to 25% and 75 to 90%, respectively (¶0007). The plastic also comprises from 0.05 to 5%, based on the thermoplastic, of thermally decomposing free-radical generator (¶0035), as well as latent hardeners (¶0045).

While Ratzsch does not teach the claimed amount of free-radical generator or hardener, however, the experimental modification of this prior art in order to ascertain optimum operating conditions fails to render applicants' claims patentable in the absence of unexpected results. MPEP 2144.05. The amount of free-radical initiator controls the reaction rate and the amount of hardener controls the hardness of the plastic. Consequently, it would be obvious to optimize. A prima facie case of obviousness may be rebutted, however, where the results of the optimizing variable, which is known to be result-effective, are unexpectedly good. MPEP 2144.05.

Considering Claim 31: Ratzsch et al. teaches the thermoplastic being polyesters based on maleic anhydride, fumaric acid, phthalic acid, isophthalic acid or adipic acid with ethylene glycol, butanediol, hexanediol, ethylhexanediol, trimethylolpropane or neopentyl glycol (¶0031).

Considering Claim 32: Ratzsch et al. teaches the melamines having a molar mass of 500 to 5000 (Abs) and a melamine/formaldehyde ratio of 1:1.3 (Example 1).

Considering Claims 33-34: Ratzsch et al. teaches the plastic comprising fillers such as cellulose (¶0067). While Ratzsch does not teach the claimed amount of filler,

the experimental modification of this prior art in order to ascertain optimum operating conditions fails to render applicants' claims patentable in the absence of unexpected results. MPEP 2144.05. The amount of filler controls the strength of the plastic. Consequently, it would be obvious to optimize. A prima facie case of obviousness may be rebutted, however, where the results of the optimizing variable, which is known to be result-effective, are unexpectedly good. MPEP 2144.05.

Considering Claim 35: Ratzsch et al. teaches the plastic comprising 0.05 to 3 wt.% of an emulsifier (hydrophobicizer) such as a copolymer of C4-C20 ethylenically unsaturated dicarboxylic anhydride and ethylenically unsaturated monomer with ammonia (¶0059). Such a compound would have imide groups derived from ammonia and the anhydride.

Considering Claim 36: Ratzsch et al. teaches the plastic used for profiles (¶0065).

Considering Claim 56: Ratzsch et al. teaches the plastic used for the production of pressed parts, foamed plastics, and coating layers (¶0065). Such plastics can be used in the vehicle industry.

Response to Arguments

Applicant's arguments filed 9/8/08 have been fully considered but they are not persuasive.

In response to applicant's arguments that amended claim 56 overcomes the 112 and 101 rejections, a claim is indefinite where it merely recites a use without any active,

positive steps delimiting how this use is actually practiced. Claim 56 recites a product, but not how that product is used.

In response to applicant's arguments that Ratzsch does not teach an interpenetrating network, while the thermoplastics are initially mixed as particles, subsequent curing will crosslink the thermoplastics, resulting in an interpenetrating network.

In response to applicant's arguments that the melamine resins of Ratzsch are not etherified, Ratzsch teaches reacting the melamine resins with C1-C10 alcohols (etherifying) (¶0010).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NOAH FRANK whose telephone number is (571)270-3667. The examiner can normally be reached on M-F 9-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Eashoo/ NF
Supervisory Patent Examiner, Art Unit 1796 12-3-08